BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2000-242-E - ORDER NO. 2002-357

MAY 3, 2002

IN RE: South Carolina Electric & Gas Company,	)	ORDER DENYING AND
	)	DISMISSING PETITION
Complainant/Petitioner,	)	
	)	
vs.	)	
	)	
Aiken Electric Cooperative, Inc.,	)	
	)	
Respondent/Defendant.	)	
	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition of South Carolina Electric & Gas Company (SCE&G or the Company) seeking an Order requiring Aiken Electric Cooperative, Inc. (Aiken or the Coop.) to cease and desist supplying electric service to Sandhills Elementary/Intermediate School on the grounds of an alleged violation of the Territorial Assignment Act (the Act), S.C. Code Ann. Section 58-27-610 et seq. (1976). This dispute concerns provision of electric service to certain premises near the town of Swansea in Lexington County, South Carolina. Aiken denies that it is in violation of the Act. Because of the reasoning stated below, we deny and dismiss the Petition.

A hearing was held on the matter on February 28, 2002 at 10:30 AM in the offices of the Commission, with the Honorable William Saunders, Chairman, presiding. SCE&G was represented by Francis P. Mood, Esquire and Catherine D. Taylor, Esquire. Aiken

was represented by Wilburn Brewer, Jr., Esquire and Richard S. Dukes, Jr., Esquire. The Commission Staff was represented by F. David Butler, General Counsel.

SCE&G presented the testimony of Clarence L. Wright. Aiken presented the testimony of Gary Stooksbury, Lawrence Baker, Franklin Vail, and Al Lassiter. The Commission Staff presented no witnesses in this case.

Cross-motions to strike the testimony of Clarence L. Wright and Al Lassiter were made by Aiken and SCE&G, respectively. We deny both motions. We will weigh the testimony of the two witnesses and give whatever weight we deem appropriate to the testimony of each witness.

The crux of the matter is that SCE&G maintains that the school is located in its assigned territory and that it has the exclusive right to serve pursuant to S.C. Code Ann. Section 58-27-620 et seq. (1976), the Territorial Assignment Act. Aiken claims that it has a right to serve the school by virtue of the fact that one of the school buildings, a maintenance building, is wholly within a 300-foot corridor of the Coop., and that it has the right to serve the entire tract as one premises pursuant to S.C. Code Ann. Section 58-27-620(1)(d)(iii) (1976). We agree with the position taken by the Coop.

The facts presented at the hearing are largely undisputed and the case turns on an interpretation of the relevant statutory law.

According to the testimony, prior to construction of the school in question, the School District received proposals for review from both SCE&G and Aiken. The School District had a plat laying out the construction and had located a maintenance building in the corridor of Aiken in the belief that this would give them a choice to be served by

either SCE&G or Aiken. Except for the maintenance building in the corridor, the school tract is within the assigned territory of SCE&G. The classroom school building is in SCE&G's assigned territory under the Territorial Assignment Act. After a final comparison, with the assistance of its engineering consulting firm, the School District chose to be served by Aiken. See Tr., Vail at 48-53.

The testimony further shows that the Coop. provides electricity to the maintenance building and to the classroom school building which are on the same tract of land, through one meter. Because of cost considerations and a study of engineering practices, the meter is located on the classroom building. After construction of the classroom building and the maintenance building, the school set up a temporary classroom building that was separately metered, but which is not separately billed, the billing being combined in one charge. The temporary building is in SCE&G's assigned territory. Tr., Stooksbury at 92-137.

In order to be able to serve the school, Aiken upgraded its line from single-phase to a three-phase line. This was accomplished largely by overlaying new lines over the location of the old lines and then removing the old lines. New poles were used except for the take-off pole from which the 300-foot corridor was measured. The corridor in question was established by lines of the Coop. that were in place prior to the Territorial Assignment Act and the corridor and lines are shown on the official maps of the Commission. See Hearing Exhibit 5. According to the testimony, service through these lines and the resulting corridor has been maintained by the Coop. for 52 years. Tr., Baker at 78.

The contention of SCE&G that all of the tract in question is within its assigned territory is incorrect. A part of the property is clearly with the Coop.'s corridor. See Hearing Exhibits 4 and 5. Under the Act, S.C. Code Section 58-27-640 (1976), the area "within 300 feet from the lines of all electric suppliers as such lines exist on the date of the assignments" are not included in the assigned territory, but are reserved as the supplying entity as a corridor. See S.C. Code Section 58-27-620 (c) and (d).

S.C. Code Ann. Section 58-27-620(1)(d)(iii)(1976) provides in part:

> (1) Every electric supplier shall have the right to serve:
> (d) If chosen by the consumer, any premises initially requiring electric service after July 1, 1969,...
> (iii) are located partially within three hundred feet of the lines of such electric supplier, as such lines exist on July 1, 1969, or as extended to serve consumers it has the right to serve or as acquired after that date, and partially within a service area assigned to another electric supplier pursuant to Section 58-27-640.

The above statute must be read in conjunction with the statutory definition of premises. S.C. Code Ann. Section 58-27-610(2)(1976) provides:

> The term "premises" means the building, structure or facility to which electricity is being or is to be furnished; provided, that two or more buildings, structures or facilities which are located on one tract or contiguous tracts of land and are utilized by one electric consumer for farming, business, commercial, industrial, institutional or governmental purposes, shall together constitute one "premises," except that any such building, structure or facility shall not, together with any other building, structure or facility, constitute one "premises" if the electric service to it is separately metered and the charges for such services are calculated independently of charges for service to any other building, structure or facility.

These two statutes, read together, clearly authorize Aiken to serve the Sandhills School. By virtue of providing electricity to a building located wholly within its service area, i.e. the maintenance building, Aiken also would be entitled to serve other buildings on the same tract utilized by the same consumer, i.e. Sandhills School, where there only was one meter for the classroom building and the maintenance building, and additionally serving the temporary classroom building where, though separately metered, the billings were combined. Under these circumstances, the situation clearly was one of customer choice.

Contrary to the argument of SCE&G, there is no requirement under the statute that the metering point be located in the corridor through which the service rights are claimed. The statute in question, S.C. Code Ann. Section 58-27-610(2) only requires that "electricity is being or is to be furnished," leaving the parties free to design the system according to best engineering practice where multiple buildings are involved.

Further, even though the line creating the corridor rights has been upgraded from single-phase to three-phase, we believe that the upgrading of the service in that manner does not destroy the original corridor right created under the Act. A contrary view is unacceptable, since, under SCE&G's theory, a provider having corridor rights would not have the right to upgrade its lines to serve longstanding customers whose needs increased over the years even if the customers were located wholly within the corridor. SCE&G would seem to argue that a provider upgrading its services would lose its corridor rights or its right to serve "premises" under the statutory definitions. We reject that interpretation for the reason stated above.

Clearly, the language in the statute referring to the lines as they existed on July 1, 1969 is intended to fix the geographic location of the corridor as of that date, thereby protecting the investment made by the provider. SCE&G's witness confirmed the fact that there is no statute or regulation that states that you cannot upgrade a line as long as it is still in the corridor. Tr., Wright at 38. In the present case, the evidence shows that although the line was upgraded, it was overlaid over the old line so as to maintain the corridor's geographic location.

Accordingly, based on all of the above, the Commission rules that under the statutory definition of premises and the statutory provisions for customer choice, the situation in the case at bar was clearly a customer choice situation, and the customer chose the Coop. The service by Aiken is permissible as service to a "premises" as defined by the statute. Therefore, the Petition of SCE&G is denied and dismissed.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)